

Message Text

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SUBJECT: GOP EXTENDS PERIOD FOR SMALL ENTERPRISE FIRMS
TO MEET REQUIREMENTS OF LAW

REF: A) 76 LIMA 1888, B) 76 LIMA 2866

1. ON FEB. 15 THE GOP PASSED DECREE LAW 21799 WHICH EXTENDED UNTIL DEC. 31, 1977, THE DEADLINE FOR SMALL ENTERPRISES TO FULFILL CERTAIN PROVISIONS OF THE SMALL ENTERPRISE LAW (DECREE LAW 21435 OF FEB. 24, 1976-SEE REFTEL A). THE PROVISIONS OF DECREE LAW 21435 SPECIFICALLY AFFECTED ARE THOSE WHICH SET FEB. 24, 1977, A) AS THE DEADLINE FOR OWNERS AND SHAREHOLDERS OF A SMALL ENTERPRISE TO ACCOMMODATE TO RESTRICTIONS ON THEIR HOLDING SHARES IN OTHER BUSINESSES, EITHER IN THE SMALL ENTERPRISE SECTOR OR IN THE REFORMED PRIVATE SECTOR AND B) AS THE DEADLINE FOR SMALL BUSINESSES TO REORGANIZE UNDER ONE OF THREE BUSINESS FORMS: ONE PERSON BUSINESS, INDIVIDUAL BUSINESS WITH LIMITED RESPONSIBILITY AND COMMERCIAL SOCIETY WITH LIMITED RESPONSIBILITY. THE NEW DECREE LAW ALSO EXTENDS FROM DEC. 31, 1976 TO DEC. 31, 1977, THE DEADLINE FOR SMALL BUSINESSES TO DIVEST THEMSELVES OF FOREIGN INVESTMENT. THIS LATTER DEADLINE HAD ALREADY BEEN EXTENDED FROM MARCH 24, 1976.

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2. COMMENT: A. THE NEW DECREE LAW APPEARS TO BE AN ATTEMPT BY THE 2ND PHASE OF THE PERUVIAN REVOLUTION TO LIBERALIZE LEGISLATION DEVELOPED DURING THE REVOLUTION'S VELASCO YEARS WHICH TENDED TO RESTRICT PRIVATE SECTOR BUSINESS OPPORTUNITIES. THE SECOND EXTENSION OF DEADLINE FOR DIVESTMENT OF FOREIGN INVESTMENT IN SMALL BUSINESSES OFFERS HOPE TO NUMEROUS FOREIGNERS WHO OPERATE SMALL CONCERNS HERE THAT THIS PROVISION MAY NEVER GO

INTO EFFECT. (IN THIS REGARD, FORMER VICE MINISTER OF INDUSTRY AND TOURISM, WHO WE UNDERSTAND WAS PRINCIPAL DRAFTER OF SMALL ENTERPRISE LAW, TOLD ECON OFF SOME MONTHS AGO THAT LONG-TERM FOREIGN RESIDENTS OF PERU HAD NO CAUSE FOR ALARM SINCE THEY WOULD NOT BE CONSIDERED FOREIGNERS FOR PURPOSES OF THIS LAW.)

B. SIMILARLY, EXTENSION OF DEADLINE FOR DIVESTITURE OF HOLDINGS IN OTHER COMPANIES HAS BEEN GREETED POSITIVELY BY BUSINESSMEN. BECAUSE OF LEGAL LIMITATION ON TOP SALARY IN A SMALL BUSINESS (MAXIMUM SALARY CAN ONLY BE 12 TIMES THE FIRM'S LOWEST SALARY), MANY PROPRIETORS OF SMALL BUSINESSES OWNED OR HAD SIZABLE INTERESTS IN SEVERAL SMALL COMPANIES. APPLICATION OF THE DIVESTITURE PROVISION WOULD HAVE CAUSED THESE ENTREPRENEURS TO EXPERIENCE DRASTICALLY REDUCED INCOMES.

C. WHILE THE NEW DECREE LAW MODIFIES ONLY THE ABOVE MENTIONED DEADLINES ESTABLISHED IN THE SMALL ENTERPRISE LAW, THEY ARE NOT THE ONLY PROVISIONS OF THE ORIGINAL LAW THAT HAVE NOT YET BEEN PUT INTO PRACTICE. FOR EXAMPLE, THE GOP HAS NOT ISSUED THE IMPLEMENTING LEGISLATION TO COVER THE PROFIT-SHARING PROVISIONS OF THE LAW, AND MOST FIRMS, CONSEQUENTLY, HAVE NOT BEGUN THE DISTRIBUTION OF PROFITS CALLED FOR IN LAW. ONE REPUTABLE LAW FIRM HAS ADVISED ITS CLIENTS TO SIT TIGHT IN EXPECTATION OF MODIFICATION AND OR EMASCULATION OF THE LAW. IN LIGHT OF THE GOP'S LATEST ACTION THE FIRM'S ADVICE MAY BE WELLFOUNDED.

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